

1 DOWNEY BRAND LLP  
 2 JAMIE P. DREHER (Bar No. 209380)  
 3 JOSEPH K. LITTLE (Bar No. 322179)  
 Email: jdreher@downeybrand.com  
 4 621 Capitol Mall, 18<sup>th</sup> Floor  
 Sacramento, California 95814  
 Telephone: 916.444.1000  
 Facsimile: 916.444.2100

5 Attorneys for Carol Struve  
 6

7 UNITED STATES BANKRUPTCY COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
 9

10 In re

11 PG&E Corporation,

12 and

13 PACIFIC GAS AND ELECTRIC  
 COMPANY,

14 Debtors.  
 15

16 ☐ Affects PG&E Corporation  
 17 ☐ Affects Pacific Gas and Electric Company  
☒ Affects both Debtors

18 \*All papers shall be filed in the Lead Case,  
 19 No. 19-30088-DM,  
 20

Case No. 19-30088-DM

Chapter 11  
 Lead Case, Jointly Administered

**MOTION PURSUANT TO FED. R.  
 BANKR. P. 9006(b)(1) TO ENLARGE THE  
 TIME FOR CAROL STRUVE TO FILE  
 PROOF OF CLAIM**

Date: February 24, 2021  
 Crtrm.: Courtroom 17  
 450 Golden Gate Avenue  
 San Francisco, CA 94102  
 Judge: Hon. Dennis Montali

Objection deadline: February 17, 2020  
 4:00 p.m. (Pacific Time)

21 Pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, by this motion  
 22 (“Motion”) Carol Struve (“Movant”) seeks an order expanding the time for her to file her proof of  
 23 claim in these cases. Movant (through counsel) filed their claim with Prime Clerk on February 3,  
 24 2021. This Motion is based upon the points and authorities set forth herein and the concurrently  
 25 filed Notice of Hearing and Declaration of Richard Frankel (“Frankel Decl.”) in support of the  
 26 Motion, in addition to any evidence or oral argument presented at the time of any hearing on this  
 27 matter. In support thereof, Movant, by and through her undersigned counsel, respectfully  
 28

1 represents as follows:

2 **SUMMARY OF ARGUMENT**

3 The general bar date in these cases was October 21, 2019 (“Original Bar Date”). The  
4 process for submission of timely claims has continued after the Original Bar Date. Pursuant to the  
5 Stipulation Between Debtors and Official Committee of Tort Claimants to Extend Bar Date for  
6 Fire Claimants and for Appointment of Claims Representative (Dkt# 4651), the Original Bar Date  
7 was extended for the benefit of Unfiled Fire Claimants to December 31, 2019 at 5:00 p.m.  
8 (Prevailing Pacific Time). The Debtors’ chapter 11 plan (“Plan”) was confirmed by court order on  
9 June 20, 2020, and pursuant to the Notice of Effective Date, the Plan became effective as of July  
10 1, 2020.

11 This Motion concerns the claims of Carol Struve, a Camp Fire victim who had to evacuate  
12 the blaze and lost her home and her personal property. Ms. Struve has long suffered from  
13 posttraumatic stress disorder since suffering the sudden, tragic loss of her son. The Camp Fire  
14 events exacerbated her condition, which prevented Ms. Struve from pursuing her claims any  
15 earlier.

16 Application of the so-called *Pioneer* factors shows that Movant’s late filing is the result of  
17 excusable neglect and therefore permissible under Rule 9006(b)(1). As to the first such factor,  
18 Movant’s late filing will cause no prejudice to Debtors, inasmuch as the Plan has been confirmed,  
19 the associated Fire Victim Trust funded, and so the inclusion of Movant’s claim in the pool of fire  
20 victim claims will have no impact at all on the Debtors or the bankruptcy estates. As to the second  
21 *Pioneer* factor, Movant’s delay in filing their claim and any resultant impact on these proceedings  
22 are exceedingly modest and immaterial for the same reasons that Debtors will not be prejudiced.  
23 As to the third *Pioneer* factor, the reason for the delay and whether it was in Movant’s reasonable  
24 control, the reason for the delay is as described herein. Movant, who suffers from severe  
25 posttraumatic stress disorder, thought she filed a claim for her damages but was unsuccessful in  
26 doing so. Movant did not have home insurance at the time of the Camp Fire and struggled to  
27 navigate the claims procedure, partially due to her condition. Once Movant became aware of her  
28 failure to file a proof of claim, she contacted counsel, who promptly filed the Proof of Claim and

1 contacted bankruptcy counsel for assistance in seeking the instant relief. These inquiries  
 2 demonstrate Movant's good faith, satisfying the fourth *Pioneer* factor. Because consideration of  
 3 the *Pioneer* factors points overwhelmingly to Movant's neglect having been excusable, late filing  
 4 of the proof of claim should be permitted.

### 5 **JURISDICTION AND VENUE**

6 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,  
 7 the Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General Order 24  
 8 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court  
 9 for the Northern District of California. This is a core proceeding pursuant to 28 U.S.C. § 157(b).  
 10 Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate  
 11 for the relief requested herein is Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure.

### 12 **BACKGROUND**

13 As set forth in the Declaration of Richard Frankel filed contemporaneously herewith,  
 14 Movant, who suffers from severe posttraumatic stress disorder, thought she filed a claim for her  
 15 damages from the Camp Fire but was unsuccessful in doing so. The Camp Fire destroyed  
 16 Movant's uninsured home and her personal property within. Movant struggled to navigate the  
 17 claims procedure, partially due to her condition. Once Movant became aware of her failure to file  
 18 a proof of claim, she contacted counsel, who promptly filed the Proof of Claim and contacted  
 19 bankruptcy counsel for assistance in seeking the instant relief

### 20 **BASIS FOR RELIEF REQUESTED**

21 Bankruptcy Rule 9006(b)(1) allows the enlargement of time for "an act . . . required or  
 22 allowed to be done at or within a specified period . . . by order of court." Rule 9006(b)(1) further  
 23 provides:

24 [T]he court for cause shown may at any time in its discretion (1) with or without  
 25 motion or notice order the period enlarged if the request therefor is made before the  
 26 expiration of the period originally prescribed or as extended by a previous order or  
 (2) on motion made after the expiration of the specified period permit the act to be  
 done where the failure to act was the result of excusable neglect.

27 Bankruptcy Rule 9006(b)(1). "Excusable neglect" under Bankruptcy Rule 9006(b)(1) is a flexible  
 28 concept and case law has identified a four non-exclusive factors to be considered:

1 With regard to determining whether a party's neglect of a deadline is excusable . . .  
2 we conclude that the determination is at bottom an equitable one, taking account of  
3 all relevant circumstances surrounding the party's omission. These include . . . [1]  
4 the danger of prejudice to the [nonmovant], [2] the length of the delay and its  
5 potential impact on judicial proceedings, [3] the reason for the delay, including  
6 whether it was within the reasonable control of the movant, and [4] whether the  
7 movant acted in good faith.

8 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 395, 113 S.Ct. 1489,  
9 1498 (1993) (citations omitted); *see also In re Orthopedic Bone Screw Prods. Liability Litig.*, 246  
10 F.3d 315, 323 (3d Cir. 2001) (citing *Pioneer*, 507 U.S. at 395). Rule 9006(b)(1) allows “late  
11 filings caused by inadvertence, mistake, or carelessness, not just those caused by intervening  
12 circumstances beyond the party's control.” *Pioneer*, 507 U.S. at 381.

13 In *Pioneer*, a creditor represented by experienced bankruptcy counsel missed the proof of  
14 claim deadline because his lawyer overlooked the filing date in the bankruptcy court’s notice. The  
15 Supreme Court affirmed the Sixth Circuit’s finding of excusable neglect and endorsed a balancing  
16 test, the hallmark of which is consideration of various factors to aid in determining whether a  
17 Movant’s neglect of a bar date was excusable, thereby justifying a late proof of claim filing. This  
18 equitable determination is to “tak[e] account of all relevant circumstances surrounding the party’s  
19 omission.” *Id.* at 395, 113 S. Ct. at 1498; *see also Corning v. Corning (In re Zilog, Inc.)*, 450 F.3d  
20 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list of relevant factors). Consideration of all  
21 four *Pioneer* factors—as well as a fifth engrafted onto the *Pioneer* analysis by some courts--  
22 supports the conclusion that Movant’s failure to file this proof of claim prior to the general bar  
23 date was excusable.

24 Because in this case there is no danger of prejudice to the Debtors, the first *Pioneer* factor  
25 weighs overwhelmingly in Movant’s favor. *See, e.g., In re O'Brien Env'tl. Energy, Inc.*, 188 F.3d  
26 116, 128 (3d Cir. 1999) (overruling bankruptcy court’s finding of prejudice when allowing a late  
27 claim would not require disgorgement to paid creditors and the claim could not jeopardize the  
28 debtor’s recovery since debtor was a “large, successful company with annual revenues and  
earnings in the millions”); *In re Best Payphones, Inc.*, 523 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015)  
(citing Scott I. Davidson & Jennifer A. Bender, *Late-Filed Claims are not Always Excluded from*

1 *the Distribution Party*, AM. BANKR. INST. J. 16, 62 (Jan. 2014)) (where unsecured creditors will  
2 be made whole, “the debtor will not be able to object to a proof of claim solely on the grounds that  
3 the proof of claim was filed after the bar date”); *In re Garden Ridge Corp.*, 348 B.R. 642, 646  
4 (Bankr. D. Del. 2006) (finding no prejudice in late claim when payout of the claim would be via  
5 preferred stock and would not require any disgorgement of funds already paid out even if it might  
6 have affected the amount of preferred stock ultimately available to other creditors). The tininess of  
7 Movant’s claim relative to Debtors’ estates speaks to the absence of prejudice. *See, e.g., In re*  
8 *Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the late claim in relation to the  
9 estate is a consideration in determining prejudice).

10 Moreover, any prospect of prejudice is especially unlikely here because of the form of  
11 Debtors’ Plan, which provided for a lump-sum payment for the benefit of all fire victims. Adding  
12 or subtracting claims from the totals does not affect that formulation of the Plan, or in any real  
13 way affect the estate. While the Trust has recently been partially funded, distributions from the  
14 Trust have not been made, as the Trustee and his professionals and team are in the process of  
15 formulating claims resolution calculations and procedures.

16 Consideration of the second *Pioneer* factor, the length of the delay and its potential impact  
17 on these proceedings, also strongly favors Movant. Here, although the claims bar date has passed,  
18 there is no substantive impact on these proceedings and the administration of this case. *See In re*  
19 *Lyondell Chemical Co.*, 543 B.R. 400, 410 (Bankr. S.D.N.Y. 2016) (length of delay is only given  
20 meaning by its effect on the administration of the case). Movant’s late filing, if permitted by the  
21 Court, would have little to no appreciable impact on these proceedings.

22 As to the third *Pioneer* factor, the reason for the delay and whether it was in Movant’s  
23 reasonable control, again leans in favor of excusability. Movant acknowledge this Court’s  
24 observation, in 2004, that “[o]n balance, ... the authorities construing *Pioneer* weigh the reasons  
25 for the delay factor most heavily.” *In re Pacific Gas & Electric, Co.*, 311 B.R. 84, 91 (Bankr. N.D.  
26 Cal. 2004) (citing *Graphic Communications Int’l Union, Local 12-N v. Quebecor Printing*

1 *Providence, Inc.*, 270 F.3d 1 (1st Cir. 2001)).<sup>1</sup> A “satisfactory explanation for the late filing” is  
 2 required. *Graphic Communications at 5*.

3 The reason for the delay was that Movant, who suffers from severe posttraumatic stress  
 4 disorder, thought she filed a claim for her damages but was unsuccessful in doing so. Movant did  
 5 not have home insurance at the time of the Camp Fire and struggled to navigate the claims  
 6 procedure, partially due to her condition. Once Movant became aware of her failure to file a proof  
 7 of claim, she contacted counsel, who promptly filed the Proof of Claim and contacted bankruptcy  
 8 counsel for assistance in seeking the instant relief.

9 It is also critical to note that an order granting this Motion is of course without prejudice to  
 10 the rights of relevant parties (the Trustee of the Fire Victim Trust for example) to object to  
 11 Movant’s claim on substantive or legal grounds, other than timeliness.

### 12 CONCLUSION

13 For the reasons set forth above, Movant respectfully requests that this Court enter an order  
 14 pursuant to Bankruptcy Rule 9006(b)(1) as follows:

- 15 1. Granting this Motion;
- 16 2. Directing that the Proof of Claim attached as Exhibit 1 to the concurrently filed  
 17 Declaration of Richard Frankel be deemed timely filed;
- 18 3. Granting such other or further relief as the Court deems just and proper.

19  
 20  
 21  
 22  
 23 <sup>1</sup> That said, the Fifth and Eleventh Circuits and courts in at least two other circuits (the Third and  
 24 the Eighth) have identified the danger of prejudice is the most important of the Pioneer factors.  
 25 See *Greyhound Lines, Inc. v. Rogers (In re Eagle Bus Mfg., Inc.)*, 62 F.3d 730, 737 (5th Cir. 1995)  
 26 (“Under Pioneer, the central inquiry is whether the debtor will be prejudiced.”); *Advanced*  
 27 *Estimating System, Inc. v. Riney*, 77 F.3d 1322, 1325 (11th Cir. 1996) (“Primary importance  
 28 should be accorded to the absence of prejudice to the nonmoving party and to the interest of  
 efficient judicial administration.”); *In re Cable & Wireless USA, Inc.*, 338 B.R. 609, 614 (Bankr. D.  
 Del. 2006) (quoting *In re Tannen Towers Acquisition Corp.*, 235 B.R. 748, 755 (D.N.J. 1999) (“In  
 applying the *Pioneer* test, courts place the greatest weight on whether any prejudice to the other  
 parties will occur by allowing a late claim.”); *Matter of Papp Intern., Inc.*, 189 B.R. 939, 944  
 (Bankr. D. Neb. 1995) (citing *In re Sacred Heart Hos. of Norristown*, 186 B.R. 891 as suggesting  
 “the most significant [*Pioneer*] factor ... is that of prejudice to the debtor.”).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: February 5, 2021

DOWNEY BRAND LLP

By:                     /s/ Jamie P. Dreher                      
JAMIE P. DREHER  
Attorneys for Carol Struve